

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALEXANDER USKOLOVSKY
and ALEXANDER ROZENBAUM

Appeal No. 2001-2110
Application No. 09/095,462

ON BRIEF

Before BARRETT, RUGGIERO, and SAADAT, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 25-36, which are all of the claims pending in the present application. Claims 1-24 have been canceled. An amendment filed April 21, 2000 after final rejection was denied entry by the Examiner.

The disclosed invention relates to a method and device for assisting in avoiding traffic accidents and violations. An onboard digital camera is positioned in a vehicle and continuously provides images of the vehicle surroundings. The captured images are

Appeal No. 2001-2110
Application No. 09/095,462

displayed on a vehicle screen display and are stored in a digital memory.

Claim 25 is illustrative of the invention and reads as follows:

25. A method of avoidance of traffic accidents and violations through significant enhancing safety and convenience of driving by providing a better observation including under limited visibility conditions comprising:

a) positioning aboard a vehicle at least one digital camera with facile attaching and detaching, said digital camera having at least one photoreceiver, one lens for forward view, and one lens for rear view, whereby an [sic, a] user can employ the camera separately from said vehicle for regular manually operated applications;

b) continuously shooting at a predetermined frequency by the camera, unless turned off manually, surroundings of said vehicle;

c) filtering out by said camera under limited visibility conditions the visible part of received light flow including dazzling headlights to give significantly distinct vision of said surroundings to a driver under low light or fog, rain, snowfall, or smoky conditions;

d) showing images captured in front and on the sides of, and behind said vehicle by said digital camera on at least one onboard screen so that said driver can see forward, left and right, and rear views of a full real-time picture of said surroundings at a glance, including under low light or fog, rain, snowfall or smoky conditions.

The Examiner relies on the following prior art:

Blessinger	5,140,436	Aug. 18, 1992
Secor	5,289,321	Feb. 22, 1994
Bamford	5,596,382	Jan. 21, 1997
Jones et al. (Jones)	5,764,785	Jun. 09, 1998
		(filed Aug. 21, 1995)

Appeal No. 2001-2110
Application No. 09/095,462

Claims 25-36 stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness the Examiner offers Secor in view of Blessinger and Jones with respect to claims 25, 28, 29, 32, and 33, and adds Bamford to the basic combination with respect to claims 26, 27, 30, 31, and 34-36.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs¹ and the Answer² for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

¹ The Appeal Brief was filed September 5, 2000 (Paper No. 19). In response to the Examiner's Answer mailed September 25, 2000 (Paper No. 20), a Reply Brief was filed November 1, 2000 (Paper No. 21), which was acknowledged and entered by the Examiner in the communication dated January 10, 2001 (Paper No. 22).

² As indicated at page 3 of the Answer, a detailed statement of the grounds of rejection appears in the Office action mailed November 22, 1999 (Paper No. 11).

Appeal No. 2001-2110
Application No. 09/095,462

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 25-36. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v.

Appeal No. 2001-2110
Application No. 09/095,462

Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

We consider first the Examiner's obviousness rejection of claims 25, 28, 29, 32, and 33 based on the combination of Secor, Blessinger, and Jones. With respect to each of the appealed independent claims 25, 28, and 32, Appellants' response to the obviousness rejection asserts a failure by the Examiner to establish a prima facie case of obviousness since proper motivation for the Examiner's proposed combination of references has not been set forth. In particular, Appellants contend (Brief, page 5; Reply Brief, page 2), that the Examiner has established no motivation for the skilled artisan to modify the vehicle camera system of Secor to provide a forward view of the vehicle's surroundings in addition to Secor's disclosed side and rear views.

After reviewing the arguments of record from both Appellants and the Examiner, we are in general agreement with Appellants' position as stated in the Briefs. We find no evidence provided by the Examiner to support the assertion (Office action, paper no. 11) that ". . . it is considered quite obvious to simply change the

position of the camera such that the camera has one lens with a photo-receiver for forward view in order to observe the condition of the traffic in front of the car."

It is well settled that "the Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). See also In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), in which the court required evidence for the determination of unpatentability by clarifying that the principles of "common knowledge" and "common sense" may only be applied to analysis of evidence, rather than be a substitute for evidence. The court has also recently expanded their reasoning on this topic in In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002).

We recognize that the Examiner, at page 5 of the "Response to Argument" portion of the Answer, has buttressed the assertion of obviousness by arguing that a mere change in position of an element, such as moving the video camera to provide a front view in the present factual situation, is not entitled to patentable weight. It is our view, however, that the Examiner has improperly

relied on a per se rule of obviousness that a change in position of parts is not patentable. The issue of obviousness must always be determined on a case by case basis considering the specific recitations of the claimed invention and the specific teachings of the applied prior art.

We further agree with Appellants (Brief, page 5; Reply Brief, page 2) that the claimed invention does not involve the mere changing of position of the vehicle camera to provide a front view as asserted by the Examiner, but rather provides an additional lens to add a front view presentation in addition to a rear view. In any case, even accepting, arguendo, the Examiner's assertion that Appellants are merely claiming the change in position of a vehicle camera, we find no compelling reason for the skilled artisan to do so in Secor. The vehicle camera system of Secor is designed to aid the driver while driving a car by providing a screen display of views of surroundings which are not readily seen, i.e., the rear and sides. In our opinion, there would be no motivation for positioning a camera to provide a front view which, as pointed out by Appellants, would merely duplicate the driver's own front view vision through the windshield.

We have also reviewed the Blessinger and Jones references applied by the Examiner to address the claimed predetermined

Appeal No. 2001-2110
Application No. 09/095,462

frequency continuous filming and image filtering features, respectively. We find nothing in these references, however, which would overcome the above noted deficiency in Secor.

In view of the above discussion, since all of the claim limitations are not taught or suggested by the applied prior art, it is our opinion that the Examiner has not established a prima facie case of obviousness. Accordingly, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 25, 28 and 32, nor of claims 29 and 33 dependent thereon based on the combination of Secor, Blessinger, and Jones.

Turning to a consideration of the Examiner's obviousness rejection of dependent claims 26, 27, 30, 31, and 34-36 in which Bamford is added to the combination of Secor, Blessinger, and Jones, we do not sustain this rejection as well. We recognize that Bamford, applied by the Examiner as providing a teaching of a vehicle camera mounted on a rearview mirror assembly, does provide a disclosure of providing a front view of a vehicle surroundings. We agree with Appellants, however, that the system of Bamford is directed to a different problem with a different solution than the other applied prior art.

Our interpretation of Bamford coincides with that of Appellants, i.e., Bamford's system is an impact actuated system

Appeal No. 2001-2110
Application No. 09/095,462

which takes a photograph of, for example, an accident after it occurs. Such a system is in clear contrast to the system in Secor which is designed to provide continuous rear and side views of vehicle surroundings to aid a driver while driving an automobile. Given the disparity of problems addressed by the applied prior art references, and the differing solutions proposed by them, it is our view that any attempt to combine them in the manner proposed by the Examiner could only come from Appellants' own disclosure and not from any teaching or suggestion in the references themselves.

In conclusion, we have not sustained any of the Examiner's 35 U.S.C. § 103(a) rejections of the claims on appeal.

Appeal No. 2001-2110
Application No. 09/095,462

Accordingly, the decision of the Examiner rejecting claims 25-36 is reversed.

REVERSED

LEE E. BARRETT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
MAHSHID D. SAADAT)	
Administrative Patent Judge)	

JFR/dal

Appeal No. 2001-2110
Application No. 09/095,462

ALEXANDER USKOLOVSKY
13150 MAXELLA AVENUE
APARTMENT 12F
MARINA DEL REY CA 90292-6485